

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ANTONIO WEBB, Register No. 810566,)	
)	
Plaintiff,)	
)	
v.)	No. 06-4271-CV-C-NKL
)	
STATE OF MISSOURI,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff Antonio Webb, an inmate confined in a Missouri mental institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1. Named as sole defendant is the State of Missouri.

In support of his claims, plaintiff alleges that nondefendant Loretta Fuller disclosed private medical and criminal information to others by reading it out loud to plaintiff in front of other inmates, in violation of the Health Insurance Portability and Accountability Act (HIPAA) and plaintiff's right to privacy.

Plaintiff has requested leave to proceed without paying the filing fee, pursuant to 28 U.S.C. § 1915. Under section 1915, the court may waive filing fees and costs if it finds a plaintiff is indigent and if the claim should not be dismissed on certain other enumerated grounds. If appropriate, the court may impose a partial filing fee under L.R. 83.7. In re Williamson, 786 F.2d 1336 (8th Cir. 1986).

Plaintiff's affidavit indicates that he is indigent and currently unable to pay the full filing fee. Nevertheless, when a plaintiff seeks leave to proceed without prepayment of the filing fee, the court must dismiss the case if it finds the claim to be frivolous or malicious, if it fails to state a claim for which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915 (e)(2). The term "frivolous," as used in the statute,

does not necessarily imply the plaintiff's claims are unimportant, but may mean only that the federal court lacks the authority to address them.

Case law indicates that where a plaintiff seeks leave to proceed under section 1915, a claim should be dismissed if it "lacks an arguable basis either in law or fact" or is based on an "indisputably meritless legal theory." Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989). The statute has been interpreted to give the court "the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Id. at 327. Baseless factual contentions are those that are "fanciful," "fantastic" or "wholly incredible." Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) (citation omitted).

HIPAA does not create a private cause of action for violations of the Act. See Bradford v. Blake, 2006 WL 744307 (E.D. Mo. 2006) (unpublished) (citing Johnson v. Quander, 370 F. Supp.2d 79, 99-100 (D.D.C. 2005)); Gaul v. Hughes Pharmacy Services, Inc., 2005 WL 1491216 (N.D. Iowa 2005) (court's research revealed every court that has considered whether HIPAA creates a private cause of action, either express or implied, has concluded not). Congress enacted HIPAA to provide for both civil and criminal penalties to be imposed upon individuals who improperly handle or disclose individually identifiable health information; however, the law specifically indicates that the Secretary of Health and Human Services pursue action against an alleged offender, not a private individual. Johnson, 370 F. Supp.2d at 100. Therefore, plaintiff's claims fail to state a proper cause of action under 42 U.S.C. § 1983, and should be dismissed.

IT IS, THEREFORE, RECOMMENDED that plaintiff be denied leave to proceed in forma pauperis and his claims be dismissed, pursuant to 28 U.S.C. § 1915, for failure to state a claim for which relief can be granted.

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make

specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 11th day of January, 2007, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge